

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 615*

Short Title: No "Stacking" of UIM Insurance.

(Public)

Sponsors: Representatives Wood; Albertson, Barbee, Barnhill, Bowman, Brown, Isenhower, Justus, Morgan, Privette, and Redwine.

Referred to: Commerce.

April 8, 1991

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT "STACKING" OF UNDERINSURED MOTORIST COVERAGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with ~~policies that are a~~ policy written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount equal to the policy limits for automobile bodily injury liability as specified in the owner's policy. An 'uninsured motor vehicle,' as described in subdivision (3) of this subsection, includes an 'underinsured highway vehicle,' which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable to that vehicle at the time of the accident is less than the applicable limits of liability under the owner's policy. For the purposes of this subdivision, the term 'highway vehicle' means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The

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1 provisions of subdivision (3) of this subsection shall apply to the
2 coverage required by this subdivision. Underinsured motorist coverage
3 shall be deemed to apply when, by reason of payment of judgment or
4 settlement, all liability bonds or insurance policies providing coverage
5 for bodily injury caused by the ownership, maintenance, or use of the
6 underinsured highway vehicle have been exhausted. Exhaustion of
7 such liability coverage for purpose of any single liability claim
8 presented for underinsured motorist coverage shall be deemed to occur
9 when either (a) the limits of liability per claim have been paid upon
10 such claim, or (b) by reason of multiple claims, the aggregate per
11 occurrence limit of liability has been paid. Underinsured motorist
12 coverage shall be deemed to apply to the first dollar of an underinsured
13 motorist coverage claim beyond amounts paid to the claimant pursuant
14 to the exhausted liability policy.

15 In any event, the limit of underinsured motorist coverage applicable to any
16 claim is determined to be the difference between the amount paid to
17 the claimant pursuant to the exhausted liability policy and the total
18 limits of the owner's underinsured motorist coverages provided in the
19 owner's policies of insurance on the particular vehicle involved in the
20 accident giving rise to the claim; it being the intent of this paragraph to
21 provide to the owner, in instances where more than one policy may
22 apply on the particular vehicle involved in the accident giving rise to
23 the claim, the benefit of all limits of liability of underinsured motorist
24 coverage under all ~~such~~ policies on that vehicle: Provided that this
25 paragraph shall apply only to nonfleet private passenger motor vehicle
26 insurance as defined in G.S. 58-131.36(9) and (10).

27 An underinsured motorist insurer may at its option, upon a claim
28 pursuant to underinsured motorist coverage, pay moneys without there
29 having first been an exhaustion of the liability insurance policy
30 covering the ownership, use, and maintenance of the underinsured
31 highway vehicle. In the event of such payment, the underinsured
32 motorist insurer shall be either: (a) entitled to receive by assignment
33 from the claimant any right or (b) subrogated to the claimant's right
34 regarding any claim the claimant has or had against the owner,
35 operator, or maintainer of the underinsured highway vehicle, provided
36 that the amount of the insurer's right by subrogation or assignment
37 shall not exceed payments made to the claimant by the insurer. No
38 insurer shall exercise any right of subrogation or any right to approve
39 settlement with the original owner, operator, or maintainer of the
40 underinsured highway vehicle under a policy providing coverage
41 against an underinsured motorist where the insurer has been provided
42 with written notice in advance of a settlement between its insured and
43 the underinsured motorist and the insurer fails to advance a payment
44 to the insured in an amount equal to the tentative settlement within 30

1 days following receipt of such notice. Further, the insurer shall have
2 the right, at its election, to pursue its claim by assignment or
3 subrogation in the name of the claimant, and the insurer shall not be
4 denominated as a party in its own name except upon its own election.
5 Assignment or subrogation as provided in this subdivision shall not,
6 absent contrary agreement, operate to defeat the claimant's right to
7 pursue recovery against the owner, operator, or maintainer of the
8 underinsured highway vehicle for damages beyond those paid by the
9 underinsured motorist insurer. The claimant and the underinsured
10 motorist insurer may join their claims in a single suit without requiring
11 that such insurer be named as a party. Any claimant who intends to
12 pursue recovery against the owner, operator, or maintainer of the
13 underinsured highway vehicle for moneys beyond those paid by the
14 underinsured motorist insurer shall prior to doing so give notice to
15 such insurer and give such insurer, at its expense, the opportunity to
16 participate in the prosecution of such claim. Upon the entry of
17 judgment in a suit upon any such claim in which the underinsured
18 motorist insurer and claimant are joined, payment upon such judgment,
19 unless otherwise agreed to, shall be applied pro rata to the claimant's
20 claim beyond payment by the insurer of the owner, operator or
21 maintainer of the underinsured highway vehicle and the claim of the
22 underinsured motorist insurer.

23 A party injured by the operation of an underinsured highway
24 vehicle who institutes a suit for the recovery of moneys for such
25 injuries and in such an amount that, if recovered, would support a
26 claim under underinsured motorist coverage shall give notice of the
27 initiation of the suit to the underinsured motorist insurer as well as to
28 the insurer providing primary liability coverage upon the underinsured
29 highway vehicle. Upon receipt of such notice, the underinsured
30 motorist insurer shall have the right to appear in defense of such claim
31 without being named as a party therein, and without being named as a
32 party may participate in such suit as fully as if it were a party. The
33 underinsured motorist insurer may elect, but may not be compelled, to
34 appear in such action in its own name and present therein a claim
35 against other parties; provided that application is made to and
36 approved by a presiding superior court judge, in any such suit, any
37 insurer providing primary liability insurance on the underinsured
38 highway vehicle may upon payment of all of its applicable limits of
39 liability be released from further liability or obligation to participate in
40 the defense of such proceeding. However, prior to approving any such
41 application, the court shall be persuaded that the owner, operator, or
42 maintainer of the underinsured highway vehicle against whom a claim
43 has been made has been apprised of the nature of the proceeding and
44 given his right to select counsel of his own choice to appear in such

1 action on his separate behalf. In the event that an underinsured
2 motorist insurer, following the approval of such application, pays in
3 settlement or partial or total satisfaction of judgment moneys to the
4 claimant, such insurer shall be subrogated to or entitled to an
5 assignment of the claimant's rights against the owner, operator, or
6 maintainer of the underinsured highway vehicle and, provided that
7 adequate notice of right of independent representation was given to
8 such owner, operator, or maintainer, a finding of liability or the award
9 of damages shall be **res judicata** between the underinsured motorist
10 insurer and the owner, operator, or maintainer of underinsured
11 highway vehicle.

12 The coverage required under this subdivision shall not be
13 applicable where any insured named in the policy rejects the coverage.

14 If the named insured rejects the coverage required under this
15 subdivision, the insurer shall not be required to offer the coverage in
16 any renewal, reinstatement, substitute, amended, altered, modified,
17 transfer or replacement policy unless the named insured makes a
18 written request for the coverage. Rejection of this coverage for policies
19 issued after October 1, 1986, shall be made in writing by the named
20 insured on a form promulgated by the North Carolina Rate Bureau and
21 approved by the Commissioner of Insurance."

22 Sec. 2. The Commissioner of Insurance shall hold hearings, pursuant to G.S.
23 58-2-50, within 90 days after the effective date of this act, to determine the size of the
24 reduction of motor vehicle liability insurance premiums resulting from the enactment of
25 Section 1 of this act which is the General Assembly's response to the 1989 North
26 Carolina Supreme Court case of Sutton v. Aetna Casualty & Surety Co., to prohibit
27 "stacking" of underinsured motorist coverages.

28 Sec. 3. This act is effective upon ratification.